IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32 (2) (b)
Description of case

Civil Writ Petition No. 184 of 2002 (M/S)

U.P. State Road Transport
Corporation, through Regional
Manager, Dehradun & another ……. Petitioners

Versus

Presiding Officer,
Labour Court, Dehradun
and another ……. Respondents

WITH

Civil Writ Petition No. 602 of 2002 (M/S)

U.P. State Road Transport
Corporation, through Regional
Manager, Dehradun & another ……. Petitioners

Versus

Presiding Officer,
Labour Court, Dehradun
and another ……. Respondents

WITH

Civil Writ Petition No. 604 of 2002 (M/S)

U.P. State Road Transport
Corporation, through Regional
Manager, Dehradun & another ……. Petitioners

Versus

Presiding Officer,
Labour Court, Dehradun
and another ……. Respondents

Date of Decision: 6th August, 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

Reserved Judgment

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Presiding Officer,
Labour Court, Dehradun
and another ……. Respondents

Mr. Amar Nath Sharma, learned counsel for the petitioners.
Mr. M.C. Pant, learned counsel for the respondents.

Hon'ble P.C. Pant, J.

These petitions have been filed on behalf of the U.P. State Road Transport Corporation (for the sake of brevity

'Corporation') under Article 227 of the Constitution of India against the three awards passed by the Labour Court, Dehradun whereby directions were issued that the workmen concerned be given designation of Clerk and to pay the pay scale thereto.

2) Brief facts in all the three petitions are more or less similar. In each petition the workman (respondent No. 2) got referred disputes to the Labour Court, Dehradun through appropriate Government for decision on the question if the workmen (concerned) are entitled to the designation of the Clerk and the pay scale thereto. Mr. Arun Singh Kushwaha, represented by respondent No. 2, a Union of the Roadways employees, in writ petition No. 184 (M/S) of 2002 was a Driver in the petitioner's Corporation, whose services were utilized to meet casual exigencies on the clerical post. However, it is alleged in the petition that Mr. Arun Singh Khushwaha did not underwent any selection process as per the rules for clerical job not the post of Driver was interchangeable with that of a junior Clerk. Infact, the post of Driver is that of Class IV. It is alleged in the petition that the Corporation was well within its jurisdiction to take clerical work from the said Driver in pursuance to the Circular letter dated 09.03.1994 (copy Annexure- 1 in W.P. No. 184 (M/S) of 2002). It is further alleged in the petition that by merely taking clerical work from a Driver he does not become entitled to the post and pay scale of the junior clerk and Award in favour of the workman is against the law.

3) In writ petition No. 602 (M/S) of 2002 the facts are different only to the extent that Mr. Manwar Singh and Pawan Kumar Goyal (from whom work of Pay / Booking Clerk was taken) were Conductor and Helper respectively, while in writ petition No. 604 (M/S) of 2002, Mr. Devendra Pal, Mr. Ramesh

Kumar Sharma and Mr. Aditya Nath Tiwari were Cleaners in the petitioner's Corporation and the work taken was that of Store Keeper. In petition No. 184 (M/S) of 2002, the Award dated 31.05.2002 in reference case No. 205 of 2000 is under challenge while in petition No. 602 (M/S) of 2002, Award dated 20.03.2001 passed in reference case No. 62 of 2000 and in petition No. 604 (M/S) 2002, Award dated 23.03.2001 passed in reference case No. 18 of 2000 are challenged.

4) The petitions were contested by respondent No. 2, Roadways Employees Union and counter affidavit is filed on its behalf. In petition No. 184 (M/S) of 2002, the maintainability of the petitions have been challenged on the ground that the workmen have not been impleaded as parties. It is admitted that the respondent No. 2, Roadways Employees Union has taken up the cause of the workmen in each of the petitions and got it referred to the Labour Court. It is further stated in the counter affidavit (in W.P. No. 184 (M/S) of 2002) that the workman, Arun Singh Kushwaha was appointed as Driver on 06.03.1991 and soon thereafter clerical work was taken from him under written orders of the Assistant Divisional Manager of the Corporation and by the time the reference was made the workman had already worked on ministerial side for more than six years. The order of Labour Court has been defended in the counter affidavit as lawful. Similar counter affidavit has been filed in writ petition No. 602 (M/S) of 2002 by Pawan Kumar Goyal, workman (Helper) himself and in writ petition No. 604 (M/S) of 2002 by Ramesh Kumar Sharma, workman (Cleaner).

5) During the pendency of the petitions the newly created Uttaranchal Transport Corporation has also been included as second petitioner.

6) I heard learned counsel for the parties and perused the record.

7) The question before this Court is that whether the Labour Court was legal in holding and directing that workmen (Class IV employees) be given designation and pay scale of junior Clerk?

8) Mr. A.N. Sharma, learned counsel for the petitioners submitted that as to the appointment to the post of Clerks certain qualifications are required and one has to go through the selection process for appointment to such posts. He drew my attention to procedure for recruitment as contained in para V of U.P. State Road Transport Corporation Employees Service Regulations, 1981. Undoubtedly, none of the workmen in the aforesaid writ petition have undergone the selection process as contained in the Regulations.

On behalf of the petitioners my attention was further drawn to para III of said Regulations, 1981 which contained Rule 11 and 12. Rule 11 and 12 reads as under:

> *"11.* ***Sources of.-*** *(1) Recruitment to various categories of posts in the service shall be made from one or more of the following sources as decided by the Board from time to time:*
>
> *(a) by direct recruitment;*
>
> *(b) by promotion from amongst Corporation employees as have put in at least 3 years service in the next lower post through a departmental test or interview in any other manner prescribed by the Board from time to time;*
>
> *(c) by deputation or on contract.*
>
> *(2) Notwithstanding anything contained in sub-regulation (1) the recruitment may be made from any other source approved by the Board.*

(3) subject to such direction as may be given by the Board, employees possessing requisite qualification shall also be entitled to compete in direct recruitment.

12. ***Reservations.-*** *Reservation for candidates belonging to Scheduled Castes, Scheduled Tribes and other categories shall be made in accordance with the orders of the Government issued from time to time in regard to reservation in Government service.*

As such from amongst the Class IV employees one could have been recruited from Class IV to Class III through departmental examination also, but the concerned workmen have not been recruited through departmental examination.

9) Learned counsel for the petitioners also drew my attention to principle of law laid down in Vir Singh V. State of Haryana and others reported in 1999 (JUDICIAL REPORTS (Labour and Services) pg. 674. In said case the petitioner was appointed as Ticket Verifier on daily wages and later appointed Conductor w.e.f. 11.01.1986 in the pay scale of Rs. 400-600 simultaneously for sufficient long time work of clerk was taken from him. Punjab & Haryana High Court dismissed the writ petition filed by the petitioner for mandamus directing the respondent to change his cadre from Conductor to that of Clerk. The present petitions are squarely covered to the facts of said case, as such this Court is in agreement with the submission of learned counsel for the petitioners.

Mr. M.C. Pant, learned counsel for the respondent No.2 argued that the Labour Court has given detailed reasons on the basis of the record in coming to the conclusion that the services of the workmen were being taken as Clerks continuously for a

long time as such they could not have been denied the pay scale of the clerk.

10) I have gone through the Awards in all the three petitions. Infact, what the learned presiding Officer of the Labour Court has done is that he has permitted the recruitment in class III bypassing the rules and regulations including the ones relating to reservation of Scheduled castes and backward classes. The finding of the learned Labour Court does not appear to be wrong to the extent that clerical work taken from the workmen concerned who were Drivers, Conductors and Cleaners in the Corporation but mere that much is not enough for directing to give designation and pay scale of Clerks to them. Learned Labour Court has not even looked into the fact if the vacancies in the clerical posts were exited or not. The apex Court in writ petition No. 12897 of 1984; Shyam Babu Verma and others V. Union of India decided on 08.02.1984 (Supreme Court Labour Judgment (1994-98) has held that the principle of equal pay for equal work should not be applied in a mechanical or casual manner. Learned Labour Court has taken the shelter of the principle of equal pay for equal work ignoring statutory rules. In M.P. Rural Agriculture Extension Officers V. State of M.P. and another reported in 2004 (3) Supreme Today 110, the Apex Court has not found it just to apply doctrine of equal pay for equal work even if the posts were interchangeable. In the present case the posts of Drivers / Conductors/ Cleaners on one hand were not at all interchangeable with that of the junior Clerk / Pay Clerk / Store Keeper on the other hand.

11) On behalf of the respondent No. 2 reliance was placed on principle of law laid down in Co-operative Central Bank Limited V. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others reported in AIR 1970 SUPREME COURT 245 and it is

contended that the jurisdiction of the Industrial Tribunal in not limited merely administrating the existing laws and enforcing existing contracts but also the Tribunal can vary the contracts of service between employer and employees. The contention appears to be misconceived for the reason here in this case before the Court that employment of the Drivers / Conductors / Cleaners is not based on contracts with the Corporation. Learned counsel for the respondent No. 2 referred the principle of law laid down in Bharat Bank Limited V. Employees of Bharat Bank reported in 1950 A.I.R. 188 and submitted that the Industrial Tribunal though not a Court has powers of discharging the judicial functions like the Court. I have no reason to disbelieve it but that does not held the respondent for the reason that Labour Court has no authority to say good bye to the rules and regulations relating to the procedure of recruitment.

12) For the reasons as above, the Awards in question in the aforesaid three petitions are not tenable in law and liable to be quashed. Accordingly, the petitions are allowed. No order as to costs. However, the affected Drivers / Conductors / Cleaners may seek appointment to the clerical posts by making representation before the petitioners and their appointments may be made by the petitioners as per the rules contained in U.P. State Road Transport Corporation Employees (other than Officers) Service Regulations, 1981.

(P.C. Pant, J.)

Dt. 06 August 2004.
H. Negi